

IN THE SUPREME COURT OF THE STATE OF FLORIDA

RODERICK D'ANTHONY WILLIAMS,

Petitioner,

Case No. SC17-506

v.

5th DCA No. 5D16-1348

STATE OF FLORIDA,

Respondent.

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

MERITS BRIEF OF RESPONDENT

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STATEMENT OF THE CASE AND FACTS

Petitioner's statement of the case and facts is substantially accurate; however, Respondent would make the following additions and/or corrections:

Petitioner was charged on July 7, 2010, by indictment with first degree murder with a firearm in count I as follows:

IN THAT RODRICK DEANTHONY WILLIAMS on or between April 26, 2010 and April 27, 2010, in the County of ST. JOHNS and State of Florida, did unlawfully, from a premeditated design to effect the death of a human being, kill and murder JAMES VINCENT BROOKINS, a human being, by shooting him with a firearm, and RODRICK DEANTHONY WILLIAMS did carry, display, use, or threaten to use a firearm, as defined in Florida Statute 790.001(6) in the course of said murder;

AND/OR RODRICK DEANTHONY WILLIAMS perpetrated said killing while engaged in the commission or attempted commission of a Kidnapping and/or Robbery;

AND/OR RODRICK DEANTHONY WILLIAMS did some act or said some word which was intended to and which did incite, cause, encourage, assist or advise SHARINA JADINE PARKER and/or HARRY LEWIS HENDERSON, to actually commit the crime.

(CAPITAL FELONY)

(R44). He was also charged with one count of kidnapping. Id.

The jury was instructed that to find Petitioner guilty of first degree premeditated murder, they had to find Petitioner caused the victim's death and the killing was premeditated.

(R355). When instructing the jury on first degree felony murder,

the jury was advised that Petitioner was either the person who actually killed the victim, or that the victim was killed by a person other than Petitioner, but that Petitioner and the person who killed the victim were principals to the commission of the felonies of robbery, attempted robbery, kidnapping, or attempted kidnapping. (R357). He was found guilty as charged in the indictment of the crimes of First Degree Murder and Kidnapping. (R400-01).

In its opinion on direct appeal affirming Petitioner's convictions for first degree murder and kidnapping, the Fifth District Court of Appeal remanded with the following instructions:

On remand, the trial court shall hold an individualized sentencing hearing pursuant to section two of chapter 2014-220, Laws of Florida, to consider the enumerated and other pertinent factors "relevant to the offense and [Williams's] youth and attendant circumstances." Ch. 2014-220, § 2, Laws of Fla. Because the jury did not find that Williams actually possessed and discharged a firearm during the crime, the court must make a written finding as to whether Williams killed, intended to kill, or attempted to kill the victim. Ch. 2014-220, § 1, Laws of Fla. Based on that determination, after holding the individualized hearing, the trial court may sentence Williams to life imprisonment if it finds that life is an appropriate sentence. Id. If the trial court determines that life is not an appropriate sentence, then it should sentence Williams to a term of at least forty years' imprisonment. Id. Either way, unless Williams has a prior conviction

of a felony enumerated in section three of chapter 2014-220, Laws of Florida, arising out of a separate criminal transaction or episode, he will receive a judicial review of his sentence after fifteen or twenty-five years, depending on the court's determination.

Williams v. State, 171 So. 3d 143, 145 (Fla. 5th DCA 2015).

Pursuant to mandate, the trial court held an extensive resentencing hearing to consider the relevant statutory factors in imposing a proper sentence for Petitioner. (R1185-1309). During this hearing, the Petitioner's mother testified that although she did not know who Petitioner's father was, her own father (Petitioner's grandfather) was a father figure in his life and provided financial support for them. (R1191-92). She described her father as a strong, firm man who loved Petitioner, but took the old approach of being tough with him and insisting that he act in a certain way or he would receive a "whipping." (R1195-96, 1208-09).

Petitioner stayed with other family members as well, who treated him "okay;" his mother testified that she heard one of his aunts slept with him when he was a young teenager, but she hoped that was not true. (R1196-97,1208). She explained that even though she was on drugs, she was a good mom who had a good job and tried to be there for Petitioner to take care of him as best she could. (R1199, 1203). She taught him right from wrong,

and he was a smart kid who tried to get her off drugs, knowing they were bad. (R1204-05).

During his time at Hamilton Correctional Institution, Petitioner was cited for being in an unauthorized area, for disrespect, and for possession of synthetic cannabis. (R1222). He had started there in an open bay dorm, but was later moved to a two-man cell, which is safer. (R1221-22). Petitioner was doing better in prison after being transferred to Madison Correctional Institution. (R1224-25, 1228). He was the youngest person in his pod, and the older inmates took him under their wing and made sure he was staying out of trouble. (R1225-26). The prison situation would be no different if Petitioner received a 25 year sentence or a 50 year sentence. (R1224). Petitioner's own expert witness agreed that the assessment of a person's chances of success upon release would be more accurate the longer he is in prison. (R1243).

In describing the facts of this case, the prosecutor noted that the murder was especially horrific, summarizing the crime as follows:

[The victim] was held captive in a home for hours and hours. He was tortured. He was taped. He was beat. And he was on the cusp of being killed several times. This Defendant participated in that. This Defendant was part of that. Not only did they do that to [the victim] in Jacksonville, they decided to put him in the trunk, drive him 45 minutes down into the

middle of the woods, open a trunk and shoot him several times.

(R1299-1300). The victim's condition by the time he was finally shot and killed is well illustrated by the photographs introduced at trial. (R192-93, 196, 198).

After the hearing to determine whether Petitioner actually killed, or intended to kill the victim, the trial court, in a detailed order, set forth the following facts:

The State argued that it advanced two theories at trial, premeditated murder and felony murder. The State contended that its two principal pieces of evidence at trial were the Defendant's confession and the testimony of Michael Rivers, a jailhouse informant. Mr. Rivers testified at trial that his cooperation resulted in a twelve month reduction of his sentence. Mr. Rivers testified at trial that while they were in custody together, Defendant relayed information to him about the victim's murder. According to Mr. Rivers, Defendant relayed that he brought a handgun and that he hit and punched the victim in the face with a gun. The State pointed out that the victim's face was badly beaten in, thus corroborating Mr. Rivers' testimony. Mr. Rivers also stated Defendant told him he pointed a gun at the victim's head. At trial, Mr. Rivers testified that Defendant told him the murder was all about getting his girlfriend's money back. The State pointed out that Mr. River's testimony was consistent in that Defendant previously stated the murder was about money. Mr. Rivers testified at trial that Defendant told him he drove the victim from Jacksonville to St. Johns County, got out of the vehicle, and shot the victim twice. The State contended that this is corroborated by the medical examiner's findings that the

victim had two gunshot wounds. The State asserted this proves Defendant actually killed the victim. The State argued that even if the Court were to disregard Mr. River's testimony, the State could still prove Defendant intended to kill the victim. Referring to the trial transcript, in its closing arguments, the State pointed out that Defendant initially lied to the police about his involvement. The State also pointed out that Defendant told his uncle, "My old lady needs help with the robbery. I need to go" and admitted to telling the victim "cooperate and you won't die." At trial, the State introduced a text message to Ms. Parker that it alleged was from Defendant stating: "Bae, thanks. This is Killa. I can't talk because I'm around too many people, but just chill, bae. I'm going to take care of your problems. Just give me the green light." During his interview with the detective, Defendant admitted that his nickname was "Killa." The State pointed out that Defendant initially lied about wearing a shirt around his face to conceal his identity from the victim. Further, Defendant initially told the Detective that he did not hit the victim. Then, at the end of his statement he told the Detective he was forced to hit the victim. Further, in his statement, Defendant said Mr. Henderson and Ms. Parker gave him a gun. The State questioned why they would give the Defendant a gun if he was not participating in the crime. Further, the State argued if Defendant was being threatened, it would be counterintuitive to give him a gun. The State pointed out Defendant also said that he told the victim "just tell them where the safe is, you'll live." The State pointed out Defendant admits that he left with Ms. Parker to go pick up the car in which the victim was thrown in the trunk; Defendant then brought that car to where the victim was being held. Defendant stated that he removed a scooter from the trunk of the car so that they could place the victim in the

trunk. The State argued that Defendant's statement that Ms. Parker made him participate is not believable. The State pointed out that Defendant was in a separate car driving for eight miles back to the trap house. The State argued Defendant could have driven away at that point since there was no one in the car with him. In his statement, Defendant said Harry Henderson had a 9 millimeter handgun and a 40 caliber handgun. The State asserted Defendant said he had a gun as well. The State argued the bullets in the victim did not match the guns Defendant said Harry Henderson possessed. The State argued the logical inference is therefore that Defendant shot the victim. The State disbelieved Defendant's statement that he drove the vehicle to St. Johns and thought they were going to set the victim free. The State asserted that there are several statements that contradict this. For instance, Defendant said he knew what they were going to do the whole time, indicating he knew they intended to kill the victim. The State pointed out that Defendant also said he knew "Harry had his mind made up" and that he was not going to drive the car down there and "catch this murder charge." In his statement, Defendant said he immediately got out of the car so they thought he already killed the victim.

The State argued that the Defendant does not have to have actually killed the victim; he merely must have intended that the victim be killed. The State asked the court to make the finding that Defendant intended for the victim to die. The State concluded that based on Mr. River's testimony, Defendant actually killed the victim. In the alternative, the State concluded that based on Defendant's own testimony, he intended for the victim to die.

(R676-77). The trial court concluded that Petitioner had actually killed and intended to kill as follows:

The Court finds that based on the [trial] testimony of Mr. Rivers and Defendant's own statements, Defendant actually killed the victim. Additionally, even if another court were to find that there is not sufficient evidence that Defendant actually killed the victim, this Court is just as convinced that Defendant intended to kill the victim. Based on Defendant's admissions that he drove the victim to his death, that he knew the victim would be killed, and that he beat the victim, along with the text message sent to Ms. Parker, the Court finds that Defendant also intended to kill the victim. The Court notes that at trial, the jury found Defendant guilty of kidnapping and therefore rejected the defense of duress.¹ Accordingly, the Court finds the Defendant both intended to kill and actually killed the victim.

(R679-80) (footnote in original).

On appeal from resentencing, Petitioner complained that the trial court should have empaneled a jury to make the determination whether he actually killed, intentionally killed, or attempted to kill the victim. Williams v. State, 211 So. 3d 070, 1072-73 (Fla. 5th DCA 2017). The Fifth District Court of Appeal rejected that argument based upon this Court's Falcon v. State, 162 So. 3d 854, 963 (Fla. 2015), opinion wherein this Court had not directed a jury to make the finding as to whether

¹ With the exception of felony murder, duress is not a defense to murder. See Stannard v. State, 113 So. 3d 929, 932 (Fla. 5th DCA 2013) (for the proposition that duress is not a defense to murder); Rodriguez v. State, 174 So. 3d 502, 507 (Fla. 4th DCA 2015), reh'g denied, (Sept. 30, 2015) (citing State v. Hunter, 241 Kan. 629, 640-41, 740 P.2d 559, 568 (1987) (where duress is a defense to an underlying felony so that felony is justifiable, duress is equally a defense to charges of felony murder)).

the juvenile defendant had actually killed, intended to kill, or attempted to kill the victim. Id. at 1073. Instead, as the district court pointed out, this Court had “specifically directed the trial court to make this finding, reasoning that the record did not ‘conclusively establish this fact’ because ‘the jury did not find [the defendant] to have had actual possession of a firearm during the attempted armed robbery.’” Id. at 963 n.4.

Recognizing that Falcon did not address Alleyne v. United States, --U.S.--, 133 S.Ct. 2151, 186 L.Ed. 2d 314 (2013), the Fifth District Court of Appeal certified the following question of great public importance:

DOES ALLEYNE V. UNITED STATES, --- U.S. ---, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013), REQUIRE THE JURY AND NOT THE TRIAL COURT TO MAKE THE FACTUAL FINDING UNDER SECTION 775.082(1)(b), FLORIDA STATUTES (2016), AS TO WHETHER A JUVENILE OFFENDER ACTUALLY KILLED, INTENDED TO KILL, OR ATTEMPTED TO KILL THE VICTIM?

Id. at 1073. This Court accepted jurisdiction, and briefing on the merits followed.

SUMMARY OF THE ARGUMENT

This Court should find the trial court properly made the determination whether Petitioner "actually killed, intended to kill, or attempted to kill" the victim based upon the plain language of the statute, the mandate issued by the district court, and the remedy fashioned by this Court. Additionally, the statute is not unconstitutional on its face because a first degree murder guilty jury verdict can authorize the mandatory minimum floor, and it is not unconstitutional as applied in that the required sentencing finding that Petitioner actually killed or intended to kill the victim, based upon the record, inheres in the verdict. Moreover, the maximum sentence remains the same, i.e., life, and where a juvenile receives a life sentence, the finding implicates only the timing of eligibility for judicial review. Finally, considering the record in this case, any error in not having a jury make the determination that Petitioner actually killed, intended to kill, or attempted to kill the victim was harmless beyond a reasonable doubt.

ARGUMENT

POINT ON APPEAL (RESTATED)

THIS COURT SHOULD ANSWER THE CERTIFIED QUESTION IN THE NEGATIVE AND AFFIRM THE FIFTH DISTRICT COURT OF APPEAL'S AFFIRMANCE OF THE TRIAL COURT'S DETERMINATION THAT PETITIONER ACTUALLY KILLED AND INTENDED TO KILL.

Petitioner contends the trial court erred by refusing to empanel a jury to make the determination whether he "actually killed, intended to kill, or attempted to kill" the victim in this case. As the trial court followed the plain language of the statute - which designates the trial judge, not the jury, as the factfinder - the mandate issued by the district court, and the remedy fashioned by this Court, Respondent respectfully disagrees. In addition, the State submits that the statute is not unconstitutional on its face as applied in violation of the Sixth Amendment because a first degree murder guilty jury verdict can authorize the mandatory minimum floor, and the required finding can inhere in the verdict. Moreover, the maximum sentence remains the same, i.e., life, and where a juvenile receives a life sentence, the finding implicates only the timing of eligibility for judicial review. Finally, any error is harmless beyond a reasonable doubt.

The issue reflected in the certified question presents a purely legal question; accordingly, the appropriate standard of

review is *de novo*. See Kephart v. Hadi, 932 So. 2d 1086, 1089 (Fla. 2006) (“The interpretation of a statute is a purely legal matter and therefore subject to the *de novo* standard of review.”); Jones v. Mariner Health Care of Deland, Inc., 955 So. 2d 43, 46 (Fla. 5th DCA 2007) (matters of statutory interpretation require application of the *de novo* standard of review). In considering a challenge to the constitutionality of a statute, this Court is “obligated to accord legislative acts a presumption of constitutionality and to construe challenged legislation to effect a constitutional outcome whenever possible.” Fla. Dep't of Revenue v. City of Gainesville, 918 So. 2d 250, 256 (Fla. 2005) (quoting Fla. Dep't of Revenue v. Howard, 916 So. 2d 640, 642 (Fla. 2005)). “[A] determination that a statute is facially unconstitutional means that no set of circumstances exists under which the statute would be valid.” Id.

The statute at issue was enacted in 2014 and is found at section 775.082(1)(b), Florida Statutes. That section provides, in relevant part, as follows:

1. A person who actually killed, intended to kill, or attempted to kill the victim and who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age shall be punished by a term of imprisonment for life if, after a sentencing hearing conducted by the court in accordance

with s. 921.1401, the court finds that life imprisonment is an appropriate sentence. If the court finds that life imprisonment is not an appropriate sentence, such person shall be punished by a term of imprisonment of at least 40 years. A person sentenced pursuant to this subparagraph is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(a).

2. A person who did not actually kill, intend to kill, or attempt to kill the victim and who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or by a term of years equal to life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

3. **The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(a) or (c).** Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

(Emphasis added). Notably, there is nothing in the statute that requires a jury make this determination; instead, the statute explicitly provides that "the court" shall make such findings. See §§ 775.082(1)(b)1. & 2., Fla. Stat. This is exactly what the

trial court did here. Cf. Oats v. Jones, SC17-68, 2017 WL 2291288, at *2 (Fla. May 25, 2017).

Nonetheless, Petitioner moved for the empanelment of a jury to make the determination whether he actually killed, intended to kill, or attempted to kill the victim. The trial judge denied the motion based on the Fifth District Court of Appeal's explicit holding in the earlier appeal.

In its earlier decision, the Fifth District Court of Appeal remanded to allow "the court" to make a written finding as to whether the Defendant killed, intended to kill, or attempted to kill the victim. Williams, 171 So. 3d at 145. That is exactly what the trial court did here.

On appeal from resentencing, Petitioner complained that the trial court should have empaneled a jury to make the determination whether he actually killed, intended to kill, or attempted to kill the victim. Williams v. State, 211 So. 3d 1070, 1072-73 (Fla. 5th DCA 2017). The Fifth District Court of Appeal rejected that argument based upon this Court's Falcon v. State, 162 So. 3d 854, 963 (Fla. 2015), opinion wherein this Court had not directed a jury to make the finding as to whether the juvenile defendant had actually killed, intended to kill, or attempted to kill the victim. Id. at 1073. In fact, in Falcon v. State, 162 So. 3d 954 (Fla. 2015), this Court, in fashioning a remedy, directed that:

the trial court should hold an individualized sentencing hearing for Falcon pursuant to section two of chapter 2014-220, Laws of Florida, in which the trial court shall consider the enumerated and any other pertinent factors "relevant to the offense and [Falcon's] youth and attendant circumstances." Ch. 2014-220, § 2, Laws of Fla. Under section 1 of chapter 2014-220, Laws of Florida, the trial court must determine whether Falcon "actually killed, intended to kill, or attempted to kill the victim." Ch. 2014-220, § 1, Laws of Fla. If the trial court determines that Falcon "actually killed, intended to kill, or attempted to kill the victim," then Falcon must receive a sentence of at least forty years' imprisonment, with subsequent judicial review of her sentence after having served twenty-five years of that sentence. If the trial court concludes that Falcon did not "actually kill, intend to kill, or attempt to kill the victim," the trial court has broader discretion to impose a sentence of any lesser term of years, with judicial review after fifteen years if Falcon is sentenced to more than fifteen years' imprisonment.

Falcon, 162 So. 3d at 963 (footnotes omitted) (emphasis added).

Despite the plain language of subsection 775.082(1)(b)3., the express language from the Fifth District Court of Appeal, and the remedy fashioned by this Court in Falcon, Petitioner contends that the trial court erred by refusing to empanel a jury to make the determination whether he actually killed, intended to kill, or attempted to kill the victim. As the trial court followed the plain language of the statute, the mandate, and the remedy fashioned by this Court in Falcon - as it was

required to do - in making the determination, his claim of trial court error is without merit.

However, Petitioner relies upon, and the Fifth District Court of Appeal's certified question cites to Alleyne v. United States, --U.S.--, 133 S.Ct. 2151, 186 L.Ed. 2d 314 (2013). In Alleyne, the United States Supreme Court, relying upon Apprendi v. New Jersey, 530 U.S. 466 (2000), and Blakely v. Washington, 542 U.S. 296 (2004), held that any fact that increases the mandatory minimum "floor" for a crime must be found by the jury. Alleyne, 133 S.Ct. at 2162-63. Thus, the issue is whether section 775.082(1)(b)3., Florida Statutes, is unconstitutional on its face as applied under Alleyne, in that the judge, not the jury, is designated to make the sentencing determination that a juvenile homicide defendant "actually killed, intended to kill, or attempted to kill" the victim of homicide. See, e.g., Ogborn v. Zingale, 988 So. 2d 56, 59 (Fla. 1st DCA 2008) ("In looking at the four corners of Appellants' amended class action complaint, Appellants did not allege that the higher sales tax on satellite television service is unconstitutional only in their particular set of circumstances. Rather, they alleged that the higher sales tax, on its face, is unconstitutional in every instance of satellite television service in Florida. Contrary to the trial court's ruling, Appellants' challenge is facial in nature."); see also Abdool v. Bondi, 141 So. 3d 529, 538 (Fla.

2014) ("For a statute to be held facially unconstitutional, the challenger must demonstrate that no set of circumstances exists in which the statute can be constitutionally applied."); Florida Dept. of Revenue v. City of Gainesville, 918 So. 2d 250, 256 (Fla. 2005) ("[A] determination that a statute is facially unconstitutional means that no set of circumstances exists under which the statute would be valid."); see also Cashatt v. State, 873 So. 2d 430, 434 (Fla. 1st DCA 2004) ("A facial challenge to a statute is more difficult than an 'as applied' challenge, because the challenger must establish that no set of circumstances exists under which the statute would be valid.").

The State submits that the statute is not unconstitutional on its face since a guilty jury verdict can authorize the mandatory minimum floor. Moreover, the maximum sentence remains the same, i.e., life, and where a juvenile receives a life sentence, the finding implicates only the timing of eligibility for judicial review. Oats, supra.

For example, to obtain a conviction for first degree premeditated murder, the State must prove the following three elements beyond a reasonable doubt:

1. (Victim) is dead.
2. The death was caused by the criminal act of (defendant).
3. There was a premeditated killing of (victim).

Definitions.

An "act" includes a series of related actions arising from and performed pursuant to a single design or purpose.

"Killing with premeditation" is killing after consciously deciding to do so. The decision must be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. The period of time must be long enough to allow reflection by the defendant. The premeditated intent to kill must be formed before the killing.

The question of premeditation is a question of fact to be determined by you from the evidence. It will be sufficient proof of premeditation if the circumstances of the killing and the conduct of the accused convince you beyond a reasonable doubt of the existence of premeditation at the time of the killing.

Fla. Std. Jury Instr. (Crim.) 7.2. A jury must find premeditation, i.e., the intent to kill, before returning a guilty verdict for first degree premeditated murder beyond a reasonable doubt. It follows, then, that the jury has determined that the defendant actually killed, intended to kill, or attempted to kill the victim of the homicide. And, even where the jury has not explicitly found the defendant actually killed, intended to kill, or attempted to kill, the trial court does not violate Alleyne in making such a sentencing finding.

Florida law does not require an express indication that special findings are made beyond a reasonable doubt when such indication may be inferred from the record. State v. Woodall, 216 So. 3d 30 (Fla. 5th DCA 2017), reh'g denied, (Mar. 31, 2017). In Amos v. State, 833 So. 2d 841, 842 (Fla. 4th DCA 2002), the Fourth District held that the standard in Apprendi that facts used to increase the statutory maximum sentence be "submitted to a jury, and proved beyond a reasonable doubt," was satisfied without an express indication that the jury made its finding beyond a reasonable doubt. The district court explained as follows:

As to the fact of discharging a firearm, the record in this case indicates that this fact was submitted to the jury, and the jury found beyond a reasonable doubt that Amos discharged a firearm. The jury convicted Amos of "[a]ggravated Battery with a Firearm, a lesser included offense, as contained in the Information." Because the information accused Amos of "shooting [the victim] with a firearm" and the verdict specifically refers to the information, and because Amos was convicted of aggravated battery with a firearm, the finding that Amos discharged a weapon is inherent in the jury's verdict. Cameron v. State, 804 So. 2d 338, 344 n.11 (Fla. 4th DCA 2001) (rejecting Apprendi challenge for lack of a specific finding of death or injury when such finding was inherent in the conviction for manslaughter) (citing Tucker v. State, 726 So. 2d 768 (Fla. 1999) (holding that jury verdict of 'guilty of attempted first-degree murder with a firearm' supported enhanced sentence for use of a firearm)).

Amos, 833 So. 2d at 842-43. The State submits that the same logic applies to the finding that a juvenile homicide defendant actually killed, intended to kill, or attempted to kill. "Alleyne extended the Apprendi standard to mandatory minimum sentences. It follows that if cases after Apprendi do not require an express indication that the clear jury finding is 'beyond a reasonable doubt,' cases after Alleyne do not either." Woodall, supra; see Lee v. State, 130 So. 3d 707, 710-11 (Fla. 2d DCA 2013) (applying "clear jury finding" standard post-Alleyne and concluding that Alleyne error is subject to harmless error analysis like Apprendi), rev. granted, No. SC14-416 (Fla. Nov. 17, 2016).

For example, where a defendant is charged with both premeditated and felony murder, and convicted of first degree murder, the trial court can rely upon the jury verdict in making the finding whether the defendant actually killed, intended to kill, or attempted to kill the victim. To prove the crime of First Degree Felony Murder, the State must prove the following three elements beyond a reasonable doubt:

1. (Victim) is dead.

Give 2a, 2b, or 2c as applicable.

- 2.a. While engaged in the commission of a[n] (felony alleged), [(defendant)] [(defendant's) accomplice] caused the death of (victim).

b. While engaged in the attempt to commit a[n] (felony alleged), [(defendant)] [(defendant's) accomplice] caused the death of (victim).

c. While escaping from the immediate scene after [committing] [attempting to commit] a[n] (felony alleged), [(defendant)] [(defendant's) accomplice] caused the death of (victim).

Give 3a if defendant was the person who actually killed the deceased.

3. a. [(Defendant) was the person who actually killed (victim).]

Give 3b if defendant was not the person who actually killed the deceased.

b. [(Victim) was killed by a person other than (defendant); but both (defendant) and the person who killed (victim) were principals in the commission of (crime alleged).]

Fla. Std. Jury Instr. (Crim.) 7.3 (Emphasis added). Thus, where the jury instruction included only the language that the defendant actually killed the victim, and the jury found the defendant guilty of first degree murder as charged, Alleyne would be satisfied because the jury has either found the defendant guilty beyond a reasonable doubt of premeditated murder or felony murder as the actual killer. Accordingly, the trial court's subsequent sentencing finding that the defendant actually killed or intended to kill the victim would satisfy Alleyne. Similarly, where the information or indictment charges the defendant with first degree felony murder and the jury finds

in a special interrogatory or verdict that the defendant possessed and discharged the firearm that caused the death of the victim, Alleyne is satisfied.

In addition, the statute is not unconstitutional as applied because it can be inferred from the record that the jury's verdict inherently found the defendant actually killed, intended to kill, or attempted to kill the homicide victim. Petitioner was indicted for both first degree premeditated murder and felony murder and the jury was instructed with both 3a and 3b, but Petitioner's jury already rejected Petitioner's claim of duress and found him guilty as charged. Petitioner's own admissions to police, and to his fellow inmate, were the main evidence against him. That Petitioner actually killed or intended to kill was found by the guilty as charged verdict and inhered in the guilty jury verdict.

Alternatively, even assuming the statute is unconstitutional, it is well-settled that Apprendi and Blakely errors are subject to a harmless error analysis, see Washington v. Recuenco, 548 U.S. 212, 220-21 (2006); Galindez v. State, 955 So. 2d 517, 522-23 (Fla. 2007), and because Alleyne is based on the principles announced in Apprendi and Blakely, it follows that Alleyne errors are also subject to a harmless error analysis. See Britten v. State, 181 So. 3d 1215, 1218 (Fla. 1st DCA 2015) ("based on the clear and uncontested evidence of the

serious personal injury to the victim caused by Appellant, we find that the trial court's error in making the finding necessary to support Appellant's dangerous sexual felony offender designation was harmless beyond a reasonable doubt."); Lee, 130 So. 3d at 711 ("But, just as a failure to obtain a jury finding could be determined to be harmless in the context of an Apprendi or Blakely error, we conclude that a failure to obtain a jury finding can be determined to be harmless beyond a reasonable doubt in the case of an Alleyne error.") (internal citations and footnotes omitted); Lindsay v. State, 1 So. 3d 270 (Fla. 1st DCA) (applying Galindez to affirm mandatory minimum term for possession of a firearm under the 10/20/Life statute), rev. denied, 6 So. 3d 52 (Fla. 2009). An Alleyne error is harmless if the record demonstrates beyond a reasonable doubt that a rational jury would have found the fact required to impose the mandatory minimum term. See Galindez, 955 So. 2d at 523 (applying that standard to determine whether an Apprendi error is harmless).

Here, for the same reasons that the statute is not unconstitutional because the finding that Petitioner actually killed, intended to kill, or attempted to kill the victim inhered in the verdict, any error is harmless beyond a reasonable doubt. See, e.g., Plott v. State, 148 So. 3d 90, 94 (Fla. 2014) ("A claim of error under Apprendi and Blakely is

subject to a harmless error analysis."); see also Hurst v. State, 202 So. 3d 40, 66-67 (Fla. 2016) (Error in imposing death sentence on murder defendant in violation of his Sixth Amendment right to jury trial, under capital sentencing scheme in which judge rather than jury made all the necessary findings to impose a death sentence, was not structural error incapable of harmless error review). In addition, since the judge found a life sentence was appropriate, which can be imposed even where the judge concludes the defendant did not actually kill, intend to kill or attempted to kill the victim, see Kelsey v. State, 206 So. 3d 5, 11 (Fla. 2016), here, only the timing of the review is implicated. Cf. Michigan v. Hyatt, 316 Mich. App. 368, 394, 891 N.W. 2d 549, 561 (Mich. Ct. App. 2016) ("[A] judge acting within the range of punishment authorized by statute may exercise his or her discretion—and find facts and consider factors relating to the offense and the offender—without violating the Sixth Amendment.") (citing to Alleyne, 136 S.Ct. at 2163).

Finally, there is no "anomaly," as Petitioner alleges. Petitioner cites to several district court cases and quotes from Miller v. Alabama, 132 S. Ct. 2455 (2012). However, without more, it is unclear what the import of these cases is; furthermore, none of these cases have been included in the record on appeal, there are no Southern Reporter citations, and the argument that Petitioner makes implicates the Eighth

Amendment and not the Sixth Amendment. Of course, it is the latter that is at issue here. As far as the former, that juveniles convicted of first degree murder can still receive a life sentence after Miller, which prohibits life sentences without the possibility of parole (unless the juvenile receives an individualized sentencing hearing), and not life sentences, *per se*, as Petitioner appears to be suggesting, is not an anomaly, as Petitioner contends. Miller, 132 S. Ct. at 1565 (Court referencing "life-without-parole sentences" for juveniles as the "harshest possible penalty"). On the contrary, life sentences for juvenile homicide defendants resentenced under the 2014 legislation are constitutional under Miller because they receive an individualized sentencing hearing, and will be eligible for judicial review in either 25 or 15 years. Cf. Kelsey, 206 So. 3d at 11 (Juvenile defendant who pled to nonhomicide offenses, including armed sexual battery, armed burglary, and armed robbery, required to be resentenced and "when he is resentenced according to the provisions of chapter 2014-220, the State may again seek life imprisonment with judicial review."). See also Hyatt, 316 Mich. App. at 400-01, 891 N.W. 2d at 564-65 ("[A] sentencing authority remains free under Miller to impose a life-without-parole sentence based solely on the jury's verdict. Miller simply holds that a framework of protections required by the Eighth Amendment must

be implemented to ensure that the imposition of the maximum available penalty—life without parole—is proportionate to the particular offender and the particular offense. In short, the remodeling that Miller performed on life-without-parole sentences for juveniles did not touch the ceiling—or floor, for that matter—of the available sentence for juvenile homicide offenders.”); California v. Blackwell, 207 Cal. Rptr. 3d 444, 459 (Cal. Ct. App. 2016), (“Miller does not address the issue of who should decide whether a juvenile offender receives an LWOP sentence. The court simply states: ‘Graham, Roper, and our individualized sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty [i.e., a life without the possibility of parole] for juveniles.’”) (emphasis in original), as modified on denial of reh'g (Sept. 29, 2016), rev. denied (Dec. 14, 2016).

Based upon the foregoing, this Court should find the trial court properly made the determination whether Petitioner “actually killed, intended to kill, or attempted to kill” the victim based upon the plain language of the statute, the mandate issued by the district court, and the remedy fashioned by this Court. Additionally, the statute is not unconstitutional on its face because a first degree murder guilty jury verdict can authorize the mandatory minimum floor, and it is not

unconstitutional as applied in that the required sentencing finding that Petitioner actually killed or intended to kill the victim, based upon the record, inheres in the verdict. Moreover, the maximum sentence remains the same, i.e., life, and where a juvenile receives a life sentence, the finding implicates only the timing of eligibility for judicial review. Finally, considering the record in this case, any error in not having a jury make the determination that Petitioner actually killed, intended to kill, or attempted to kill the victim was harmless beyond a reasonable doubt.

CONCLUSION

Based on the foregoing argument and authority, the State respectfully requests this Honorable Court answer the certified question in the negative and affirm the Fifth District Court of Appeal's affirmance of the trial court's determination that Petitioner actually killed and intended to kill.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Merits Brief of Respondent has been furnished via Email to counsel for Petitioner, Valarie Linnen, Esq. (P.O. Box 330339, Atlantic Beach, Florida) at vlinnen@live.com this 17th day of July 2017.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

Respectfully submitted,

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211 So.3d 1070
District Court of Appeal of Florida,
Fifth District.

Roderick D'Anthony WILLIAMS, Appellant,

v.

STATE of Florida, Appellee.

Case No. 5D16-1348

Opinion filed February 10, 2017

Particular cases in general

Trial court, in light of *Falcon v. State*, 162 So.3d 954, properly denied defendant's motion to empanel a jury, instead deciding itself whether defendant actually killed, intended to kill, or attempted to kill the victim, as required to impose sentence of life imprisonment for first-degree murder committed while defendant was a juvenile. Fla. Stat. Ann. § 775.082(1)(b).

1 Cases that cite this headnote

Synopsis

Background: Defendant was convicted in the Circuit Court, St. Johns County, J. Michael Traynor, J., of first-degree murder and kidnapping committed while he was a juvenile and was sentenced to life imprisonment. Defendant appealed. The District Court of Appeal, 171 So.3d 143, affirmed the convictions, but reversed for resentencing. On remand, defendant moved to empanel a jury to make determination of whether defendant actually killed, intended to kill, or attempted to kill the victim as required to impose life sentence. The Circuit Court denied the motion and sentenced defendant to life imprisonment after determining that defendant actually killed and intended to kill victim. Defendant appealed.

[Holding:] The District Court of Appeal, Wallis, J., held that trial court properly made determination itself whether defendant actually killed victim.

Affirmed; question certified.

West Headnotes (2)

[1] Criminal Law

Review De Novo

The legality of a sentence is a question of law and is subject to de novo review.

Cases that cite this headnote

[2] Jury

Appeal from the Circuit Court for St. Johns County, J. Michael Traynor, Judge.

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Opinion

*1071 WALLIS, J.

Roderick D'Anthony Williams ("Appellant") appeals his sentences for first-degree murder and kidnapping. We find that one of Appellant's arguments on appeal warrants discussion. Appellant argues the trial court erred by denying his motion to empanel a jury to make a factual finding as to whether he actually killed, intended to kill, or attempted to kill the victim. We affirm the trial court's denial of Appellant's motion to empanel a jury and uphold his sentences, but we certify a question to our supreme court as one of great public importance.

In 2010, the State charged Appellant, then sixteen years old, by grand jury indictment with first-degree murder (count 1) and kidnapping (count 2) for his role in the death of James Vincent Brookins (the "victim"), whose body was discovered in the trunk of an abandoned car in rural St. Johns County. With regard to count 1, the State charged Appellant with premeditated first-degree murder, but also included theories of felony murder and accessory to first-degree murder. Ultimately, the verdict form listed only "First Degree Murder," without

differentiating between premeditated and felony murder. The jury convicted Appellant as charged, and the trial court sentenced Appellant to life imprisonment with the possibility of parole after twenty-five years on count 1 and fifty years' incarceration on count 2.

Appellant directly appealed his convictions and sentences, challenging several rulings on the admissibility of evidence at trial. While his direct appeal was pending, Appellant filed a Florida Rule of Criminal Procedure 3.800(b) motion to correct his sentence, reasoning that the United States Supreme Court's decision in Miller v. Alabama, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), rendered unconstitutional his life sentence for first-degree murder. Williams v. State, 171 So.3d 143, 144 (Fla. 5th DCA 2015). Our court agreed with Appellant, reversing and remanding for resentencing under chapter 2014–220, Laws of Florida. Id. at 145. Our court elaborated on its instructions upon remand as follows:

Because the jury did not find that [Appellant] actually possessed and discharged a firearm during the crime, the court must make a written finding as to whether [Appellant] killed, intended to kill, or attempted to kill the victim. Based on that determination, after holding the individualized hearing, the trial court may sentence [Appellant] to life imprisonment if it finds that life is an appropriate sentence. If the trial court determines that life is not an appropriate sentence, then it should sentence Appellant to a term of at least forty years' imprisonment. Either way, unless [Appellant] has a prior conviction of a felony enumerated in section three of chapter 2014–220, Laws of Florida, arising out of a separate criminal transaction or episode, he will receive a judicial review of his sentence after fifteen or twenty-five years, depending on the court's determination.

Id. (citations omitted).

Upon remand, Appellant moved to empanel a jury, arguing that a jury, not the trial court, must make the determination as to whether he actually killed, intended to kill, or attempted to kill the victim pursuant to Alleyne v. United States, which held that “any fact that increases the mandatory minimum is an ‘element’ that must be submitted to the jury.” — U.S. —, 133 S.Ct. 2151, 2155, 186 L.Ed.2d 314 (2013). The trial court denied Appellant's motion, reasoning that our court in the predecessor case specifically ordered the trial court to make the aforementioned factual finding. After a hearing, the trial court entered an order finding *1072 that Appellant actually killed and intended to kill the victim, subsequently resentencing Appellant to life imprisonment with a review hearing after twenty-five years on count 1 and fifty years' imprisonment with a review hearing after twenty years on count 2.

[1] “The legality of a sentence is a question of law and is subject to de novo review.” Pinkard v. State, 185 So.3d 1289, 1289–90 (Fla. 5th DCA 2016) (quoting Flowers v. State, 899 So.2d 1257, 1259 (Fla. 4th DCA 2005)). The relevant statutory section at issue in this case provides:

1. A person who actually killed, intended to kill, or attempted to kill the victim and who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age shall be punished by a term of imprisonment for life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an appropriate sentence. If the court finds that life imprisonment is not an appropriate sentence, such person shall be punished by a term of imprisonment of at least 40 years. A person sentenced pursuant to this subparagraph is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(a).

2. A person who did not actually kill, intend to kill, or attempt to kill the victim and who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or by a term of years equal to life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 15 years is entitled

to a review of his or her sentence in accordance with s. 921.1402(2)(c).

3. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(a) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

§ 775.082(1)(b), Fla. Stat. (2016).

In Alleynes, the defendant was convicted of robbery with a firearm. 133 S.Ct. at 2156. The applicable sentencing statute prescribed mandatory-minimum sentences of five years for carrying a weapon, seven years for brandishing a weapon, and ten years for discharging a weapon during the commission of a crime of violence. Id. at 2155–56. The jury found that the defendant used or carried a firearm during his offense, but did not find that he brandished or discharged the weapon. Id. However, the trial court nonetheless found that the defendant brandished a weapon during the commission of his offense and applied the seven-year minimum. Id. The Supreme Court reversed, reasoning that, “[b]ecause the finding of brandishing increased the penalty to which the defendant was subjected, it was an element, which had to be found by the jury beyond a reasonable doubt. The judge, rather than the jury, found brandishing, thus violating petitioner’s Sixth Amendment rights.” Id. at 2163–64.

[2] Appellant contends that the trial court similarly erred by failing to empanel a jury to determine whether he actually killed, intended to kill, or attempted to kill the victim. Because the affirmative finding in the case at bar increases both the mandatory-minimum from zero years to forty years—if the sentencing court determines *1073 that life is not an appropriate sentence—and the time for a sentence review hearing from fifteen years to twenty-five years, Appellant argues this issue must be determined by the jury by proof beyond a reasonable doubt.

Although Appellant’s argument initially appears to have merit, we note that our supreme court, under

circumstances similar to those in this case, did not direct a jury to make the factual finding as to whether the juvenile defendant actually killed, intended to kill, or attempted to kill the victim. Falcon v. State, 162 So.3d 954, 963 (Fla. 2015). Rather, the court specifically directed the trial court to make this finding, reasoning that the record did not “conclusively establish this fact” because “the jury did not find [the defendant] to have had actual possession of a firearm during the attempted armed robbery.” Id. at 963 n.4.

In light of Falcon, we find that the trial court did not err by denying Appellant’s motion to empanel a jury. Our supreme court has expressly authorized a trial court to make the factual determination as to whether a defendant actually killed, attempted to kill, or intended to kill a victim. See id. at 963. However, because Falcon did not address the applicability of Alleynes—as it does not appear that either party raised that issue—we certify the following question to the Florida Supreme Court as one of great public importance:

DOES ALLEYNE V. UNITED STATES, — U.S. —, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013), REQUIRE THE JURY AND NOT THE TRIAL COURT TO MAKE THE FACTUAL FINDING UNDER SECTION 775.082(1)(b), FLORIDA STATUTES (2016), AS TO WHETHER A JUVENILE OFFENDER ACTUALLY KILLED, INTENDED TO KILL, OR ATTEMPTED TO KILL THE VICTIM?

AFFIRMED; QUESTION CERTIFIED.

EVANDER and LAMBERT, JJ., concur.

All Citations

211 So.3d 1070, 42 Fla. L. Weekly D363